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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/507,929

09/17/2004

Hiroshi Kawasaki

2004\_1479A

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7590

09/08/2008

WENDEROTH, LIND & PONACK, L.L.P.

2033 K STREET N. W.

SUITE 800

WASHINGTON, DC 20006-1021

EXAMINER

SULLIVAN, DANIELLE D

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

09/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/507,929	<b>Applicant(s)</b> KAWASAKI ET AL.	
	<b>Examiner</b> DANIELLE SULLIVAN	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 6-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/21/2008 has been entered.

Claims 1, 2 and 6-8 are pending examination.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimura et al. (EP 1101760) in view of Feucht et al. (200).

### **Applicant's Invention**

Applicant claims an herbicidal composition comprising 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-

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difluoromethanesulfonylanilide and 4-(2-chlorophenyl) –N-cyclohexyl-N-ethyl-4,5-dihydro-5-oxo-1H-tetrazole-1-carboxamide (fentrazamide) for use on a paddy field.

**Determination of the scope and the content of the prior art**

**(MPEP 2141.01)**

Yoshimura et al. teaches 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-difluoromethanesulfonylanilide as a di-fluoromethanesulfonyl anilide derivative of formula (I) (page 2, section [0008], lines 40-60 thru page 4, line 1). The amount of the compound can range from 0.01 to 10% by weight when formulated as a dust or granule and 1 to 50% as an emulsifiable concentrate or water dispersible powder (page 7, section [0049], lines 25-28). Also, a method of using 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-difluoromethanesulfonylanilide on paddy rice is disclosed (page 12, section [0061], lines 30-37; page 13, Table 1, lines 10-20). The amount can range from 0.1g to 5 kg per 10 ares (page 7, section [0050], lines 29-35). The herbicide can be used in combination with another herbicide (page 7, section [0051], lines 36-37).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Yoshimura et al. does not teach the use of the combination of 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl] -6-methoxymethyl-N-difluoromethanesulfonylanilide with fentrazamide. It is for this reason that Feucht et al. is added.

Feucht et al. teaches herbicidal compositions containing anilides and one or more of a second herbicide selected from fentrazamide ([0034], page 3, column 2 and [0113]). The composition is used on rice [0003]. The ranges of the weight ratios can vary from 0.001:1 to 1000:1 parts by weight of the fentrazamide to anilide [0124]. The combinations of compounds are well tolerated and add new combinations of herbicides [0122].

It would be prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in prior art.” In re Kerkhoven 205 USPQ 1069, (C.C.P.A. 1980). Thus, combining 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl] -6-methoxymethyl-N-difluoromethanesulfonylanilide with fentrazamide is obvious because they are both taught as herbicides used on rice.

### **Finding of prima facie obviousness**

#### **Rational and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Yoshimura et al. and Feucht et al. to make a composition containing a 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl] -6-methoxymethyl-N-difluoromethanesulfonylanilide and fentrazamide, since the two components are known in the art to both be used as herbicides on rice. One would have been motivated to include fentrazamide of because Feucht et al. teaches that

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fentrazamide can be combined with anilide herbicides in order to make new herbicidal compositions.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE SULLIVAN whose telephone number is (571)270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan  
Patent Examiner  
Art Unit 1616

/Mina Haghighatian/  
Primary Examiner, Art Unit 1616